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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960

PHIL CAMPBELL, Commissioner of Agriculture of the State of Georgia, and GEORGIA FARM BUREAU FEDERATION, Intervenor,
Appellants,
v.
WILLIAM HUSSEY, JR., AULBERT J. BRANNEN, SR., AULBERT J. BRANNEN, JR., ROBERT B. BRANNEN, GEORGE C. SUGG, ED WIGGINS, GUY SUTTON, SR., MRS. L. B. WILLOUGHBY,
Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Swainsboro Division.

JURISDICTIONAL STATEMENT.

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Appellees.

On Appeal from the United States District Court for the Southern District of Georgia, Swainsboro Division.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the three-Judge United States District Court for the Southern District of Georgia, Swainsboro Division, entered on November 9, 1960, determining and declaring so much of the Georgia Tobacco Identification Act, Georgia Laws 1960, pages 214 to 227, inclusive, approved March 7, 1960 (Ga. Code Ann., Ch. 111-2), as requires the identification of flue cured leaf tobacco sold at auction, to be unconstitutional and invalid

and granting injunctive relief against Appellant, Phil Campbell, Commissioner of Agriculture of the State of Georgia, and others, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the Southern District of Georgia, Swainsboro Division, is not yet reported. A copy of the opinion of the District Court is attached hereto as "Exhibit A."

JURISDICTION.

This suit was brought under 28 U. S. C. A. § 1331 and 28 U. S. C. A. § 2284, for injunctive relief against loss and damage by violation of Article I, Section III, Paragraph III of the Constitution of the United States. The judgment of the District Court was entered on November 9, 1960, and Notice of Appeal was filed in that Court on November 29, 1960, and subsequently thereto, and within the time permitted by law, a subsequent Notice of Appeal was filed on December 7, 1960. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U. S. C. A. § 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Townsend v. Yeomans, 301 U. S. 441, 57 Sup. Ct. 842, 81 L. Ed. 1210;

Shafer v. Farmers Grain Co., 268 U. S. 189, 45 Sup. Ct. 481, 69 L. Ed. 909;

Sligh v. Kirkwood, 237 U. S. 52, 35 Sup. Ct. 501, 59 L. Ed. 835;

Camfield v. United States, 167 U. S. 518, 17 Sup. Ct. 864, 112 L. Ed. 260.

QUESTIONS PRESENTED.

As stated in the Notice of Appeal, the questions presented are:

(1) Do the identification provisions of the 1960 Georgia Tobacco Identification Act that are complained of impose a burden upon interstate commerce that is prohibited by the commerce clause of the Federal Constitution?

(2) Is the State of Georgia precluded under the Federal Tobacco Inspection Act from identifying, as to type, tobacco sold at auction within the State?

(3) Does the State of Georgia have the power to require the identification of leaf tobacco sold at auction within the State?

(4) May plaintiffs raise constitutional question?

The basic question presented is whether or not the State of Georgia has such an interest in the flue cured leaf tobacco market in this State as to authorize the State to provide and require the identification of such tobacco as to type at the time of sale when in fact the Federal Tobacco Inspection Act, nor the Rules and Regulations promulgated thereunder, nor in its application, provide for such identification, so as to prevent a fraud upon the purchasers of such tobacco where no true identification as to type is indicated.

STATUTES INVOLVED.

Federal Tobacco Inspection Act, 7 U. S. C. A., § 511, et seq.;

Georgia Tobacco Identification Act, Georgia Laws 1960, pages 214 to 227, inclusive (Ga. Code Ann., Ch. 111-2), a copy being attached hereto as "Exhibit B."

STATEMENT.

Appellant, Phil Campbell, is Commissioner of Agriculture of the State of Georgia and is charged with the duty of enforcing the provisions of the Georgia Tobacco Inspection Act, Georgia Laws 1960, pages 214 to 227, inclusive (Ga. Code Ann., Ch. 111-2), hereinafter referred to as the Act. Appellant, Georgia Farm Bureau Federation, Intervenor, is a federation of Georgia Farm Bureaus having a substantial membership, and vitally concerned with the tobacco industry, and particularly the production and marketing of tobacco in Georgia.

Appellees are engaged in the business of operating warehouses for the sale of flue cured leaf tobacco at auction, and as such, have obtained licenses and otherwise complied with the provisions of the Act except to attack the identification provisions thereof. No attack has been made upon any provision of the Act other than the identification provisions thereof.

Under the Federal Tobacco Inspection Act (7 U. S. C. A., § 511, et seq.), provisions are made for regulating the marketing and grading of flue cured leaf tobacco. Under the provisions thereof flue cured leaf tobacco has been typed primarily upon the geographic area of production. According to the Regulations of the United States Secretary of Agriculture, Type 14, as typed thereunder, is limited to that tobacco produced principally in the State of Georgia, and to some extent in the States of Florida and Alabama. Under the testimony in the record of this case, Type 14 tobacco is not produced in any area other than the three named States (Transcript, p. 159), and in the trade, Type 14 is understood to be only that flue cured leaf tobacco produced in Georgia, Florida and Alabama (Transcript, p. 142). The Act substantially adopts the Federal definition in that it adopts the Federal definition, as ap-

plied in operation and as understood by the trade, and is not in conflict therewith, to the extent prohibited by law.

Under the Federal Tobacco Inspection Act, supra, grades are uniform throughout the types of flue cured leaf tobacco and are supported within grades without distinction or differentiation by tobacco stabilization. In actual operation, tobacco has been permitted to be labeled as to type based upon the place of sale, rather than reflecting the truth as to the origin and area of production. Emphasis has been and is placed upon ascertaining and indicating the grade of the tobacco in that grade determines the support price of the sheet of tobacco offered for sale. This practice has enabled warehousemen to sell tobacco under a misnomer in that no means was provided to indicate the truth as to the true type of the tobacco at the time of sale. This practice, developed over a long period of time, has resulted in a fraud being perpetuated upon the purchasers in that producers of other than Type 14 tobacco could bring their product into this State and sell it under circumstances and labels that indicated the tobacco to be Type 14 when in fact it was not. This discrepancy could not be ascertained at the time of sale and could only be ascertained at a time later than the sale. To correct this evil and detriment to the tobacco industry, the purpose of the Act was to identify tobacco, as to type, at the time of sale. The Act and the record in this case are replete with testimony to this effect.

The record establishes beyond question that the several types of tobacco have distinct chemical characteristics as well as distinct physical and internal properties, chemical content and burning characteristics. Suffice it to say that there is a sufficient difference in the types of tobacco to more than justify the demand for a distinct type. The record further establishes the desire of purchasers to know the true identity as to type of the tobacco purchased

in that the use to be made of the tobacco is largely governed by its chemical content and characteristics.

The production of flue cured leaf tobacco in Georgia is relatively new when compared to the production of flue cured leaf tobacco in the other States. The growth of the production and the marketing of the Georgia produced tobacco developed a unique marketing system, procedure, and dates, in that the tobacco was sold in "loose leaf" or "untied" form, and the marketing season began prior to the marketing of tobacco produced in other areas. This early marketing period placed the Georgia producers in the position of having to market their tobacco very soon after harvest and without the time provided in other marketing areas. These, and other reasons, have had the result of the State enacting legislation for the protection of this market and the producers.

Georgia Laws 1935, page 476, approved March 28, 1935 (Ga. Code Ann., Ch. 111-3), fixed a maximum charge for the selling and handling of leaf tobacco. Tobacco warehousemen contested this legislation before this Court in **Townsend v. Yeomans,** 301 U. S. 441, 57 Sup. Ct. 842, 81 L. Ed. 1210. This Court discussed at length certain phases of the marketing of tobacco in Georgia and approved that Act and made findings in relation thereto.

The General Assembly of Georgia determined by the 1960 Georgia Tobacco Identification Act that it was essential to require the identification of tobacco sold at auction in this State. The Act recites the purposes thereof and establishes the procedure to provide for such identification. The Act, in operation, has had the effect of saying to all who seek to ascertain the truth of the identity sold, as to type, what the type is, and nothing more.

Appellees' action in contesting the identification provision of the Act is an effort to strike down the action of

the General Assembly so as to enable them, as warehousemen and growers, to continue to operate their businesses in such manner as to conceal the truth concerning the type of the tobacco offered for sale by them. Appellees applied for and obtained a preliminary injunction, ex parte, from Honorable Frank M. Scarlett, District Judge, on Saturday, July 30, 1960, at 8:30 P. M., two days after the tobacco marketing season opened on July 28, 1960, and after Appellees had complied with the identification provisions of the Act during two actual selling days. This action came after certain of Appellees had obtained licenses, posted bond, conformed to the opening date requirement, and otherwise complied with said Act subsequent to the date of its approval by the Governor of Georgia on March 7, 1960. The Act was of force and effect from the date of its approval by the Governor.

Service was perfected upon Appellant, Phil Campbell, Commissioner of Agriculture of the State of Georgia, on Sunday, July 31, 1960. Efforts to obtain a dissolution of the preliminary injunction on that date were unsuccessful. A hearing was set and held on August 10, 1960, on said Appellant's motion to dissolve the preliminary injunction. After hearing, United States District Judge Frank M. Scarlett declined and refused to dissolve the preliminary injunction. Thereafter, on August 16 and 17, 1960, the case was heard by the three-Judge District Court and the decision was rendered and filed on November 9, 1960, determining and declaring the identification provisions of the Act to be unconstitutional and invalid and enjoining Appellants as set forth in that opinion.

THE QUESTIONS ARE SUBSTANTIAL.

The questions are substantial in that the authority of the State of Georgia to enact legislation to require the identification—to make the truth known—of a product sold

within its borders hinges upon a determination of these questions. The very existence of the tobacco market and the continued production of tobacco in Georgia rests upon these decisions. A multi-million-dollar business as well as the livelihood of thousands of tobacco farmers and other persons who work in the tobacco industry is placed in the balance of the scales of justice. The Appellees in this case, as warehousemen and as growers, are affected.

If the authority of the State of Georgia to require the identification of tobacco be held to be non-existent, then does not the authority to require the labelling or identification of other products become ipso facto questionable? Here, the State certainly has an interest in the tobacco industry, in its marketing, production and disposition, which is a local matter of great local concern and interest.

The Act, in question here, provides for the identification of tobacco, as to type, at the time of sale. Such identification has not been provided under the Federal Tobacco Inspection Act, nor by any other means. The Act seeks to disclose the truth concerning the origin of the tobacco sold. Here, geographic origin is merely an incidental part of the basis of identification and that part is clearly recognized, utilized, and established under Federal law. The Act merely implements and aids interstate commerce rather than imposing an unlawful burden thereon.

One of the issues involved in this Appeal is very similar to that raised in the case of **Cecil C. Clark and Catherine Clark v. Joe Dwyer, as Director of the Department of Agriculture of the State of Washington,** Case No. 531, October 1960 Term, U. S. Supreme Court, wherein this Court has denied certiorari to the Supreme Court of the State of Washington to review the decision of that Court. Appellants sought to review the decision of the Supreme Court of the State of Washington reported in 156 Wash. Decisions 440 and 353 P. 2d 941. In denying certiorari,

this Court indicated that the statute there relative to the grading of apples, which Appellants therein contended, among other things, imposed an undue burden upon interstate commerce, was a legitimate exercise of that State's police power. The Washington Court had held that the statute did not impose an undue burden upon interstate commerce even though it may incidentally or indirectly affect interstate apple shipment. The case at bar, it is submitted, involves a legitimate exercise of the State's police power, and to deny review in this case would result in a conflict in the action of the District Court for the Southern District of Georgia and the action upheld by this Court in the **Dwyer** case. In that case the issue was the validity of the statute of the State of Washington relative to the packing of apples. There, as here, the question is whether the police power of the State is broad enough to support the legislation—or to phrase the question another way—is the statute beyond or in exercise of the police power?

This Court has recognized the authority of the State of Georgia to enact legislation to regulate the sale of tobacco. **Townsend v. Yeomans,** supra. As was said by this Court in **Simpson v. Shepard,** 230 U. S. 352, at 408:

> "State inspection laws and statutes designed to safeguard the inhabitants of a State from fraud and imposition are valid when reasonable in their requirements and not in conflict with federal rules, though they may affect interstate commerce in their relation to articles prepared for export or by including incidentally those brought into the State and held for sale."

A substantial question is presented as to whether or not the State of Georgia may take cognizance of and take actions to require the identification of tobacco when it is established beyond dispute that the chemical character-

istics and properties of tobacco are affected greatly by the soil and climatic conditions of the area of production. These conditions result in the production of a desirable product that is in demand for specific uses when the identity can be ascertained with certainty. This is not to say that the product is any better than another, but the product, as such, is in demand for specific uses because of its specific characteristics and properties. The record discloses that the tobacco buyers go upon markets with instructions to purchase a given quantity of a specific type of tobacco for a specific use. No other type can be used. If the tobacco is bought under the assumption that it is as represented both as to grade and type, then is the purchaser not entitled to buy and receive the specific type of tobacco for specific use according to representations? Is the State prohibited, under any theory of law, from requiring that the truth be made known concerning **any** product sold within its borders—much less a product so vital to the economy of the State and a product the production of which affects such a large segment of the population of the State?

Further, a substantial question is presented as to whether the Appellees herein may raise the constitutional questions. They complied with the provisions of the Act as to identification during two actual selling days subsequent to the opening date of the 1960 Georgia tobacco marketing season. Prior thereto and subsequent to the approval of the Act by the Governor on March 7, 1960 (the effective date of the Act), the Appellees further complied with the provisions of the Act in obtaining licenses, bonds, weighing apparatus and paraphernalia, tickets, and otherwise. No protest nor complaint was made during this period of time —in excess of four months.

The ruling of the District Court holds that Appellees here are authorized to raise the constitutional questions because:

> ". . . It is clearly established that compliance **with these provisions**" (the identification provisions of the Georgia Tobacco Identification Act) "has resulted in financial losses to the plaintiffs. . . ."

This ruling is in direct conflict with the rule announced in **Excello Corp. v. City of Chicago**, 115 F. 2d 627, in which it was held:

> "Thus it is apparent that inevitable financial pecuniary damage is not the test of the sufficiency of plaintiff's interest, otherwise the right to sue might be extended indefinitely to parties far removed, such as workmen in plaintiff's factory whose wages are reduced or lost because of lack of realization of profits by their employer."

This is to be distinguished from the rule announced in **Currin v. Wallace**, 306 U. S. 1, affirming **Wallace v. Currin**, 95 F. 2d 856, where a warehouseman was held to be authorized to test the validity of the Federal Tobacco Inspection Act. There the warehouseman was permitted to raise the constitutional questions on the basis that he had a **right** to operate his warehouse **without** complying with the Act. Here Appellees have complied until an alleged indirect financial loss has made it desirable to no longer comply, making it apparent that the sole test is "financial pecuniary damage."

In **Mass. v. Mellon**, 262 U. S. 447, 67 L. Ed. 1078, the Supreme Court of the United States announces the rule as follows:

> "The party who invokes the power must be able to show not only that the Statute is invalid, but that he has sustained, or is immediately in danger of sustaining, some **direct** injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with the people generally." (Emphasis supplied.)

The questions submitted are of such vital importance to the many persons affected that this Court should review the decision of the District Court in that that decision, it is submitted, fails to recognize the authority of the State under its police power, to enact legislation requiring the identification of tobacco sold within its borders. We believe that the questions presented by this Appeal are substantial and that they are of utmost public importance.

Respectfully submitted,

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EXHIBIT A.

In the United States District Court for the
Southern District of Georgia,
Swainsboro Division.

William Hussey, Jr., Aulbert J. Brannen, Sr., Aulbert J. Brannen, Jr., Robert B. Brannen, George C. Sugg, Ed Wiggins, Guy Sutton, Sr., Mrs. L. B. Willoughby, Plaintiffs, vs. Phil Campbell, Commissioner of Agriculture of the State of Georgia, and Cecil Attaway, Defendants.	Civil Action. No. 326.

Before Jones, Circuit Judge, Scarlett and Simpson, District Judges.

Jones, Circuit Judge.

The plaintiffs are owners or operators of tobacco auction warehouses in Swainsboro, Georgia, and in Statesboro, Georgia. They seek an injunction against the defendants, who are officials of the State of Georgia, to restrain the enforcement of certain of the provisions of an act for the regulation of the sale of flue-cured leaf tobacco passed by the General Assembly of Georgia, approved on March 7, 1960, and designated as Georgia Laws, 1960, pages 214 to 227, inclusive. The defendant, Phil Campbell, is the Commissioner of Agriculture of the State of Georgia, and by the statute he is given the duty of enforcing its provisions. It is alleged by the plaintiffs that the defendant, Cecil Attaway, is the official of the Georgia Department of Agriculture in charge of the enforcement of the statutory

provisions under attack. A temporary restraining order was entered by the district judge, Frank M. Scarlett. This district court of three judges was constituted under 28 U. S. C. A. §§ 2821, 2824, for a determination of the cause. The defendants moved to dismiss the suit because of improper venue, but at the trial they filed a waiver of venue thus disposing of this issue. Freeman v. Bee Machinery Co., 319 U. S. 448, 63 S. Ct. 1146, 87 L. Ed. 1509, reh. den. 320 U. S. 809, 64 S. Ct. 27, 88 L. Ed. 489. The defendants also filed a motion to vacate the temporary restraining order. The plaintiffs, by motion, sought to have the defendants' motion to vacate made more definite. The district judge, Frank M. Scarlett, reserved for the determination of the full court the questions presented by the motion to make more definite. The district judge declined to enter an order vacating the restraining order. The trial of the cause on final hearing made unnecessary any consideration of or ruling upon the motion to make more definite. The disposition made on final hearing has the effect of affirming the district judge in not vacating the temporary restraining order.

It is declared, in Section 1 of the Georgia statute, that:

> "It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco in an orderly manner and to provide a means of identification of types of flue-cured leaf tobacco sold in this state to the end that all purchasers thereof may be assured of the positive identification of tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown

in the traditional loose-leaf area which consists of the State of Georgia, Florida and Alabama."

The Act imposes upon the operators of tobacco auction warehouses, where flue-cured tobacco is sold, the duty of placing a white tag upon each sheet of type 14 tobacco, and a colored tag[1] upon each sheet of tobacco other than type 14, with the requirement that such tags shall remain on the tobacco where placed until after it is sold. Noncompliance with the tagging provisions of the statute by a warehouseman is made a felony punishable by imprisonment of one to five years, or a fine of not more than $5,000, or both. The statute recites that it is the intent and purpose of the tagging provisions "to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this State." These are the provisions of the Georgia Statute which the plaintiffs attack as contravening the Constitution of the United States and hence invalid.

In their complaint the plaintiffs charge that the statutory provisions mentioned, and the administration thereof constituted an unlawful discrimination in making classification of tobacco based solely upon geographical origin by requiring a white tag to be placed on all Georgia grown flue-cured tobacco and a blue tag on all flue-cured tobacco grown elsewhere. It was asserted that at the Statesboro and Swainsboro markets a high percentage of the tobacco sold, prior to the statute, was grown in South Carolina or North Carolina. It was averred that, with the tobacco being tagged as the Georgia Act required, the buyers declined to purchase the blue-tagged tobacco from the Carolinas except at prices much less than was being paid for the white-tagged Georgia grown tobacco. A demoralization of the market resulted, as appears from the com-

[1] Designated as blue by the Commissioner of Agriculture.

plaint, and the Carolina tobacco, in considerable quantity, was returned to the Carolinas and the Carolina growers, for the most part, kept their tobacco away from the sales warehouses of the plaintiffs and off the Georgia markets. It was stated that the enforcement of the Act had resulted in an unconstitutional impediment of the free flow of interstate commerce. The complaint recited that the tobacco brought to the warehouses for sale was inspected and graded prior to its sale by employees of the United States Department of Agriculture, acting under Federal law, who marked the grade of each pile of tobacco upon the identification tag of each pile of tobacco. Losses by the plaintiffs were claimed, and other claims were made of greater losses threatened, as a result of the enactment and enforcement of the challenged statutory provisions.

The defendants answered. By their answer they denied that interstate commerce is burdened by the operation of the Georgia Act, or that the Act bases the identification by type of tobacco solely on geographical origin. In their answer the defendants asserted that the enactment and enforcement of the Georgia Act were in the valid exercise of the police power of the state. The answer contained admissions of some facts pleaded by the plaintiffs and the denial of others. The material facts as admitted, stipulated or established by evidence will be hereinafter referred to in the course of this opinion.

A petition to intervene as a defendant was filed by Georgia Farm Bureau Federation, Inc., and intervention was allowed. In addition to joining with the defendants originally named in defending the Georgia Act against the attack made upon its validity, the intervenor has contended that the plaintiffs were without standing to raise the question of constitutionality.

At the beginning of the hearing the parties made the following stipulation:

"1. That Complainants have invested approximately $750,000.00 for the construction and equipping of their tobacco auction warehouses on Swainsboro and Statesboro, Georgia, markets.

"2. Said warehouses were built and equipped primarily as tobacco auction warehouses.

"3. Defendant is enforcing the Act of the State of Georgia complained of according to its terms.

"4. As an official standard of the United States the Federal Government has, under the Federal Tobacco Inspection Act, designated Types 11, 12, 13 and 14, known as flue-cured tobacco, and has designated as Type 14 tobacco only flue-cured tobacco grown in Georgia, Florida, and Alabama.

"5. Under the Federal Tobacco Inspection Act the Federal Government has also established an official standard of grades of tobacco, which are the official standard of grades of tobacco of the United States consisting of 168 different grades of flue-cured tobacco.

"6. The Secretary of Agriculture of the United States has, by proper Rules and Regulations, implemented the Federal Tobacco Inspection Act.

"7. For several years approximately 50 percent of the total tobacco sold on the Statesboro and Swainsboro, Georgia, Tobacco Markets was grown in North Carolina and South Carolina.

"8. The United States Secretary of Agriculture designates tobacco auction markets, and under applicable laws, rules and regulations sales are limited to 440 baskets per hour per set of buyers, five hours per day and five days per week. Under the foregoing Statesboro has a maximum authorized sale of 4400 baskets of tobacco per day and Swainsboro 2200.

"9. Complainants show that the 1960 tobacco selling season opened in Georgia on July 28th, 1960, and sales were held on that date and on the 29th of July following; that large quantities of tobacco from North Carolina, South Carolina and Georgia were exposed for sale on said days; that the tobacco from the several states mentioned were all graded immediately prior to sale in the manner aforesaid and that such grades were assigned by official graders of the United States Department of Agriculture. The result of the sales for the two days mentioned revealed a disparity in price, offered or received for the tobacco from the Carolinas, bearing the blue identification tag mentioned and that of Georgia tobacco bearing the white tag mentioned. The said disparity on the whole was as much as $18.00 per hundred pounds in favor of the Georgia tobacco bearing a white tag as required by the Act complained of."

It is perhaps appropriate to observe at this point that, while parties may stipulate as to facts and, under some circumstances, may waive the benefit of constitutional or statutory provisions, they cannot by stipulation fix or change the law. The construction of the statutes or regulations presents questions of law, and the courts will look elsewhere than to stipulations of the parties for the answers to such questions. Crabb v. Commissioner of Internal Revenue, 5th Cir. 1941, 121 F. 2d 1015. Thus we will look to the Federal statute and regulations for the Federal standards of typing tobacco rather than to paragraph 4 of the foregoing stipulation.

The Tobacco Inspection Act, 7 U. S. C. A., §§ 511-511 q. was enacted in 1935. The purpose of the Act was thus stated:

"Transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; such transactions

> are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein." 7 U. S. C. A., § 511 a.

To carry out the purpose of providing for uniform standards, the Act provided:

> "The Secretary (of Agriculture) is authorized * * * to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, * * *." 7 U. S. C. A., § 511 b.

Acting under this grant of authority, the Secretary of Agriculture promulgated regulations fixing standards for flue-cured tobacco. Divisions and sub-divisions of class, type and grade are set up. "Class" is defined as being "A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the method of cultivation, harvesting, or curing." 7 C. F. R., § 29.1040. The regulations define "Type" as:

> "A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be le-

termined by an examination of the tobacco." 7 C. F. R., § 29.1096.

"Grade" is defined as "A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor." 7 C. F. R., § 29.1053. Another regulation provides that "Each grade shall be treated as a subdivision of a particular type and when the grade is stated in an inspection certificate the type shall also be stated." 7 C. F. R., § 29.1144.

The regulations define four types of flue-cured tobacco. Of these, we shall have occasion to refer to the following:

Type 12. "That type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, or Eastern Carolina Flue-cured, produced principally in the coastal plains section of North Carolina, north of the South River." 7 C. F. R., § 29.1098.

Type 13. "That type of flue-cured tobacco commonly known as Southeastern Flue-cured, South Carolina Flue-cured, or New Belt of South Carolina, produced principally in the coastal plains section of South Carolina and the southeastern counties of North Carolina, south of the South River." 7 C. F. R., § 29.1099.

Type 14. "That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama." 7 C. F. R., § 29.1100.

The tobacco sold at the warehouse of the plaintiffs was nearly all purchased for shipment in interstate commerce. Hence the operation of the warehouses and the auctions held at them were in interstate commerce and subject to the provisions of the Tobacco Inspection Act. Currin v.

Wallace, 306 U. S. 1, 59 S. Ct. 379, 83 L. Ed. 441; Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1210.

The Georgia statute defines Type 14 tobacco on the basis of geographical origin and upon no other basis. If it is grown in Georgia, it would be Type 14 under the Georgia law and be given a white tag; while if it came from the other side of the Savannah River in South Carolina it would not be Type 14 and would be given a blue tag. This is the meaning of the statute and it was so construed and applied in practice. It is our considered conclusion that the Federal regulation does not classify flue-cured tobacco on the basis of geographical origin and this conclusion is reached notwithstanding an apparent contrary view recited in the stipulation. The regulations classify tobacco as to types by referring to the designations by which the several types are "commonly known" and by the areas in which each of the commonly known types are "produced principally". Thus, as the regulations require, tobaccos which have the same characteristics and corresponding qualities, colors and lengths are to be treated as one type even though grown on different sides of a boundary between two states. The testimony of the defendants establishes that, in fact, tobaccos having the same characteristics and corresponding qualities, colors and lengths may be grown on both sides of the boundary line between Georgia and South Carolina.

Both the purpose and effect of the Georgia enactment were to make a distinction at the markets, by the color tags, between tobacco grown in Georgia and that grown elsewhere. The effect was to create a wide disparity of price between the two groups of tobacco, the Carolina growers receiving a much lower amount. This resulted in losses of business to the plaintiff warehousemen. The Georgia statute imposes upon the producers of tobacco in other states who bring their products into that state for

sale onerous burdens which it does not impose upon Georgia growers. This is a discrimination in favor of the citizens of Georgia against the citizens of other states. It is a discrimination against goods in commerce grown outside of Georgia in favor of like commodities produced in that state. These discriminations result in an injury not only to the non-resident tobacco producers but to those engaged in the operation of the markets. The Federal Constitution forbids such discrimination as an unlawful interference with interstate commerce. Shafer v. Farmers Grain Co., 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909; 11 Am. Jur. 96, Commerce, § 108. See Best & Co. v. Maxwell, 311 U. S. 454, 61 S. Ct. 334, 85 L. Ed. 275; Brimmer v. Rebman, 138 U. S. 78, 11 S. Ct. 213, 34 L. Ed. 862. The prohibition "continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character." Welton v. State of Missouri, 1 Otto (91 U. S.) 275, 23 L. Ed. 347. Whether the discrimination is also a violation of the equal protection clause of the Constitution is a question which we need not decide. Cf. Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U. S. 459, 57 S. Ct. 838, 81 L. Ed. 1223.

There is another reason which, we decide, requires that the typing provision of the Georgia statute be held invalid as being repugnant to the Federal Constitution. It is our view that the Congress, by the Tobacco Inspection Act, has so occupied or preempted the field covered by the challenged portion of the Georgia statute that the latter cannot stand. The Federal Act recites that "without uniform standards of classification and inspection * * * unreasonable fluctuations in prices and quality determinations occur * * *. Such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative * * *." 7 U. S. C. A., § 511 a. The Secretary of Agriculture, upon investigation, is authorized "to estabilsh standards for tobacco

by which its type, grades, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States * * *." 7 U. S. C. A., § 511 b. This language shows the intent of Congress that there shall be a scheme of Federal regulation for the classification, grading and typing of tobacco so pervasive as to require the inference that, within this field, no room would be left for state action. Rice v. **Santa Fe Elevator Corporation**, 331 U. S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447; Missouri Pacific Railroad Co. v. Porter, 273 U. S. 341, 47 S. Ct. 383, 71 L. Ed. 672; Napier v. Atlantic Coast Line Railroad Co., 272 U. S. 605, 47 S. Ct. 207, 71 L. Ed. 432; Oregon-Washington Railroad & Navigation Co. v. State of Washington, 270 U. S. 87, 46 S. Ct. 279, 70 L. Ed. 482; Southern Railway Company v. Railroad Commission of Indiana, 236 U. S. 439, 35 S. Ct. 304, 59 L. Ed. 661; Note, 42 Va. L. Rev. 43. The Regulations of the Secretary of Agriculture carry out the statutory plan set forth by Congress.

We are unable to sustain the contention of the defendants that the questioned sections of the Georgia statute merely implement the Federal Act and regulations and are a valid exercise of the police power of the State. The Supreme Court has upheld the validity of a Georgia statute fixing maximum charges for handling and selling tobacco at auction warehouses, and rejected the contention that the state law was invalid because of occupation of the field by the United States in the enactment of the Tobacco Inspection Act. In so holding the Court stated the principle that furnishes us a guide to our decision. It was said:

> "We are thus brought to the final contention of appellants that the state law, although not in conflict with any exertion of federal authority, must fall as being repugnant to the existence of an exclusive federal power although unexercised. The contention ig-

> nores the principle that this ground of invalidity is to be found only with respect to such matters as demand a general system or uniformity of regulation; that in other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act." Townsend v. Yeomans, supra.

In the case before us the Congress has found that uniformity of regulation as to classification was necessary, and the Congress has seen fit to act. This being so there can be no justification for the typing and tagging provisions of the Georgia statute under the police power. 11 Am. Jur. 86, Commerce, § 94.

As has been shown, the typing classification as set up in the Georgia Act is purely geographical. Such a classification is in conflict with that of the United States. It has long been the rule that where state legislation conflicts with valid Federal regulation the former must fall. Gibbons v. Ogden, 9 Wheat. (22 U. S.) 1, Kelly v. State of Washington, 302 U. S. 1, 52 S. Ct. 87, 82 L. Ed. 3. The provisions of the Georgia Act under scrutiny are not mere implementations of the Federal statute and regulations. They are in direct conflict with them.

As has been noted, the intervenor questions the right of the warehousemen to question the constitutionality of the Georgia statutory provision. We shall assume that the objection of the intervenor may properly be made. The Federal courts have ever been reluctant to pass upon the validity of state statutes when attacked as violative of rights guaranteed by the United States Constitution. Only those who have been injured as the result of a denial of those rights can invoke Federal jurisdiction on constitutional questions. Voeller v. Nielston Co., 311 U. S. 531, 61 S. Ct. 376, 85 L. Ed. 322. The provisions which the plaintiffs assail directly bear upon them in the operation of their

businesses. It is upon them that the act imposes the duty of placing the tags, white or colored, upon the tobacco. It is clearly established that compliance with these provisions has resulted in financial losses to the plaintiffs as well as to the growers from other states who desired to market their tobacco at the plaintiffs' warehouses. This being so, the plaintiffs may bring and maintain the action. 11 Am. Jur. 748, et seq., Constitutional Law, § 111.

We are told that the Georgia statutory provisions are necessary, and serve a beneficent purpose. With respect to a like contention the Supreme Court has said:

> "The answer is that there can be no justification for the exercise of a power that is not possessed. If the evils suggested are real, the power of correction * * * (rests) with Congress where the Constitution intends it shall be exercised with impartial regard for the interests of the people of all the states that are affected." Shafer v. Farmers Grain Co., 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909.

Having determined that the provisions of the Georgia statute under discussion cannot withstand the assault made upon them, judgment will be entered determining that such provisions are in conflict with the United States Constitution and enjoining the defendants from their enforcement. Other provisions of the Georgia statute are not before us and are not considered by us. This opinion will serve as findings of fact and conclusions of law. Judgment will be entered in accordance with the conclusions here reached.

s/ Warren L. Jones,
t/ United States Circuit Judge.

s/ F. M. Scarlett,
t/ United States District Judge.

s/ Bryan Simpson,
t/ United States District Judge.

In the United States District Court for the
Southern District of Georgia,
Swainsboro Division.

William Hussey, Jr., Aulbert J. Brannen, Sr., Aulbert J. Brannen, Jr., Robert B. Brannen, George C. Sugg, Ed Wiggins, Guy Sutton, Sr., Mrs. L. B. Willoughby, Plaintiffs, vs. Phil Campbell, Commissioner of Agriculture of the State of Georgia, and Cecil Attaway, Defendants.	Civil Action. No. 326.

Judgment.

This cause having been heard and submitted upon the pleadings, stipulations, evidence and arguments of counsel; and the Court having determined, and does hereby determine and declare that those provisions of the Act of the General Assembly of Georgia approved on March 7, 1960, No. 557 (House Bill No. 717) and designated Georgia Laws 1960, pages 214 to 227, inclusive, which purport to require flue-cured tobacco sold at tobacco warehouses in the State of Georgia to be marked for identification as to whether it is or is not Type 14 tobacco as that type is defined in said Act, are unconstitutional and invalid; and it appearing to the Court that the plaintiffs are entitled to the relief sought by them, it is therefore

Ordered, adjudged and decreed that the defendants and their successors in office and all others acting in behalf of them or either of them are hereby perpetually and permanently enjoined and restrained from enforcing or at-

tempting to enforce the aforementioned provisions of the aforesaid Act; from enforcing or attempting to enforce, by direct or indirect or other means, on any tobacco market in Georgia, any method, plan or device which identifies or tends to identify tobacco offered for sale as to its geographic origin, or which, in any manner distinguishes or differentiates between tobacco having its origin in Georgia, Florida or Alabama on the one hand, or in South Carolina or North Carolina on the other hand; and from making or requiring any distinction or differentiation on the tobacco markets between separate lots of tobacco by reason of any geographic origin or place of growth.

It is further ordered, adjudged and decreed that the injunction bond given by the plaintiffs upon the issuance of the temporary restraining order herein is hereby dissolved.

Done this 9th day of November, 1960.

s/ Warren L. Jones,
t/ United States Circuit Judge.

s/ F. M. Scarlett,
t/ United States District Judge.

s/ Bryan Simpson,
t/ United States District Judge.

EXHIBIT B.

State of Georgia.

Office of Secretary of State.

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify, that the eleven pages of photographed matter hereto attached contain a true and correct copy of Act No. 557 (H. B. 717) approved by the Governor on March 7, 1960, entitled "An Act to regulate the sale of flue-cured leaf tobacco in this State, to provide for identification of types of tobacco sold in this State, and for other purposes", as same appears of file and record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 24th day of January, in the year of our Lord One Thousand Nine Hundred and Sixty-One and of the Independence of the United States of America the One Hundred and Eighty-Fifth.

(Seal)

Ben W. Fortson, Jr.,
Secretary of State.

AN ACT

To regulate the sale of flue-cured leaf tobacco in this State so as to enable producers to have an adequate time to properly cure, prepare, and market flue-cured leaf tobacco; to provide a means of identifying all types of flue-cured leaf tobacco sold in this State and a procedure connected therewith; to provide for the licensing and bonding of operators of flue-cured leaf tobacco and a procedure connected therewith and a license fee; to provide for the bonding of operators of tobacco warehouses, the amount thereof, and the conditions of such bond; to provide the maximum charges and expenses of handling and selling

leaf tobacco in this State; to provide that statements of charges shall be submitted by the warehouseman to the seller of tobacco; to provide for records to be kept by licensee to show the origin and amount of tobacco sold by him and a procedure connected therewith; to provide for the duties of the Commissioner of Agriculture in compiling statistics relative to the sale of leaf tobacco; to create an advisory board and to provide its composition, the duties of the members thereof and their compensation; to provide for the setting of the opening date of the tobacco marketing season in this State and to provide a procedure connected therewith; to provide a minimum tobacco marketing season in this State and a procedure for the ceasing of operations of a warehouse prior to the expiration of the maximum selling season; to provide the maximum rate of sales of leaf tobacco by warehousemen; to provide a means of identification of flue-cured leaf tobacco as to types sold in this State and a procedure connected therewith; to provide a penalty for violating the provisions of Section 13 by a licensee; to provide for identification tags for use in marketing tobacco in this state; to prohibit the mixing of type 14 tobacco with any other type of tobacco and to prescribe a means for the sale of such mixed tobacco; to provide for the registration of purchasers of tobacco for resale and a procedure connected therewith; to provide for the duties of Commissioner of Agriculture in conjunction with the administration and enforcement of this Act; to provide for certification by weighers for the weighing of tobacco at each warehouse and a procedure connected therewith; to provide for the revocation or suspension of any license or registration issued hereunder after notice and hearing and a procedure connected therewith; to provide for injunctions and a procedure connected therewith; to provide for rules and regulations; to provide for judicial review of administrative determinations or decisions and a procedure connected therewith; to provide for appeals and a procedure connected therewith; to provide for the im-

pounding of records and commodities during investigation for violations of this Act and rules and regulations promulgated hereunder; to repeal Code Chapter 111-2 relating to statistics on leaf tobacco; to repeal an Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco; to repeal an Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco; to define terms; to repeal conflicting laws; and for other purposes.

Be It Enacted by the General Assembly of Georgia:

Section 1.

It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco in an orderly manner and to provide a means of identification of types of flue-cured leaf tobacco sold in this State to the end that all purchasers thereof may be assured of the positive identification of tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the States of Georgia, Florida, and Alabama.

Section 2.

No person real or corporate shall operate, hold or conduct an auction sale for the sale of flue-cured leaf tobacco within this State without having first obtained a license for the year in which the sale is made from the Commissioner. The license shall be for the calendar year and the license fee shall be $10.00 per each calendar year and shall expire on December 31 of each year and be subject to renewal under such rules and regulations as the Commissioner shall prescribe.

Section 3.

As a prerequisite to the issuance of a license under the provisions of this Act, each applicant shall produce evidence to the Commissioner that he has in force for the calendar year for which license is sought a bond issued by a corporate entity authorized to do business in this State in the penal sum of $10,000.00. Such information shall show that the bond is in full force and effect and shall remain of full force and effect during the calendar year for which the license is sought. The bond shall be conditioned upon the licensee performing all the duties imposed upon him by law and the accounting for the proceeds of all flue-cured leaf tobacco received by him for sale and sold by him.

Section 4.

The maximum charges and expenses of handling and selling leaf tobacco by warehousemen licensed under this Act shall not exceed the following schedule, to-wit:

For auction fees, 15¢ on all piles or sheets of one hundred (100) pounds or less and twenty-five cents (25¢) on all piles or sheets over one hundred (100) pounds. For weighing and handling, ten cents (10¢) per pile or sheet for all piles or sheets of one hundred (100) pounds or less and ten cents (10¢) for each additional one hundred (100) pounds. For commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales.

Section 5.

The licensee of each and every warehouse shall render to each seller of tobacco of his warehouse an itemized statement plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

Section 6.

Each licensee shall keep a correct daily account of the number of pounds of leaf tobacco sold upon the floor of his warehouse. On or before Monday of each week, the licensee shall make a statement under oath of all of the tobacco sold upon the floor of his warehouse during the preceding week and shall transmit each report to the Commissioner. The report shall be so arranged and classified as to show the number of pounds of tobacco sold for producers, the number of pounds sold for dealers, and the number of pounds resold by the licensee for his own account or for the account of some other warehouse or licensee. In addition thereto each licensee shall indicate the number of pounds of type 14 flue-cured leaf tobacco sold upon the floor of his warehouse for producers thereof and the number of pounds of type 14 flue-cured leaf tobacco sold by persons other than producers upon the floor of his warehouse. The licensee shall report the total number of pounds of other than type 14 flue-cured leaf tobacco sold for producers and persons other than producers. In addition thereto, each licensee shall make such additional reports as shall be prescribed by the Commissioner.

Section 7.

The Commissioner shall cause to be kept and compiled the information submitted to him as to the sales of tobacco in this State. He shall cause such records to be kept in a manner so as to show the number of pounds of type 14 tobacco sold by each warehouse as well as the number of pounds of other than type 14 tobacco sold by each warehouse. He shall cause such records to be kept in a manner so as to show separately the number of pounds of type 14 tobacco and other types sold by producers and the number of pounds of each type of tobacco resold. The Commissioner of Agriculture is authorized to cause such information to be published in a manner that he deems most beneficial.

Section 8.

To aid in the administration of this Act, there is hereby created an Advisory Board to be composed of nine (9) members. Three (3) members are to be members of the House of Representatives to be appointed by the Speaker of the House, and two (2) members are to be members of the Senate to be appointed by the President of the Senate. The members of the General Assembly shall be appointed from those members who are tobacco producers or in the absence of such producers in the General Assembly such members may be appointed from the members of the General Assembly who represent the flue-cured leaf tobacco producing counties and districts of this State. One (1) member shall be the Commissioner of Agriculture, ex officio, or his representative, who shall be Chairman of the Board. One (1) member shall be a flue-cured leaf tobacco producer to be appointed by the Commissioner of Agriculture. One (1) member shall be the President of the Georgia Farm Bureau Federation, or his representative. One (1) member shall be a member of the Georgia Flue-Cured Tobacco Warehousemen's Association to be appointed by the President of that Association. The appointive members shall serve at the pleasure of the appointing officer. The members of the General Assembly shall receive the per diem and expense allowance provided for committee work of the General Assembly and such sums shall be paid from the funds appropriated for the operation of the General Assembly. The other appointive members of the Board shall be compensated in the amount of $15.00 per day for each day in attendance of the duties of the Board and shall be reimbursed for the necessary expenses incurred in the performance of their duties from the funds of the Department of Agriculture. The Commissioner shall be reimbursed for his expenses incurred in the performance of his duties. The members of the Board shall not receive the per diem provided herein for more than seven (7) days per year.

Section 9.

The Board shall meet in June of each year, or upon call of the Chairman, to survey the condition of the tobacco crop and recommend an opening date of the marketing season. The Chairman shall determine the time and place of the meeting. The Board shall recommend to the Commissioner a date for the opening of the tobacco marketing season. If the Commissioner approves the opening date or if he deems it necessary for any other reason, he shall cause one or more members of the Board to attend the meeting of the Board of Governors of the Bright Belt Warehouse Association or its successors to make known the recommendation as to the opening of the marketing season in Georgia. If the Board of Governors of the Bright Belt Warehouse Association shall disapprove the recommended date or shall indicate an opening date for the tobacco marketing season in Georgia that is not in accordance with nor agreeable to the Tobacco Advisory Board or the Commissioner, the Commissioner shall determine the opening date of the tobacco marketing season in this state. If any licensee shall hold a sale prior to the date determined by the Commissioner, the license of the licensee shall stand revoked and shall not be reinstated or reissued in the calendar year of the revocation. The revocation provided herein shall be in addition to the other penalties provided for the violation of this Act. It is the intent and purpose of this section to provide a procedure for the fixing of the opening date of the tobacco marketing season and to place the final authority to fix said date in the Commissioner of Agriculture.

Section 10.

The flue-cured leaf tobacco marketing season shall continue for a minimum of twenty-seven (27) selling days after the opening date. The operating day of each flue-cured leaf tobacco warehouse shall not exceed five (5)

actual selling hours and operating week of each such warehouse shall be limited to five (5) actual selling days, provided that no sale shall be held on Saturday or Sunday.

Section 11.

If any warehouse has two (2) successive selling days during which the actual selling time is not more than one (1) hour each day, then that particular warehouse shall be permitted to cease its operations but not before two (2) days have passed after the days that the actual selling time has not exceeded one (1) hour per day. The Commissioner may authorize a warehouse to cease operations at an earlier date than that provided herein when the Commissioner determines that the ceasing of operations by the warehouse is in the best interest of the marketing of tobacco.

Section 12.

The maximum rate of sales at any such warehouse shall not exceed four hundred fifty (450) baskets during any one (1) hour nor shall the rate of sales during any one (1) day or week exceed four hundred and fifty (450) baskets per hour.

Section 13.

(A) As an aid in providing positive identification of type 14 flue-cured leaf tobacco, it shall be the duty of each licensee to furnish white identification tags to identify type 14 tobacco. It shall be the duty of each licensee to cause such white identification tags to be placed upon each sheet of type 14 tobacco received in his warehouse for sale by requiring that producers, at the time of the receipt of tobacco in the warehouse submit proof of the origin of the tobacco to be sold. No licensee shall receive from any producer any tobacco for sale unless the licensee receives proof in the form of marketing cards, or other identification measures issued by the United States Department of

Agriculture so as to definitely establish the origin of the tobacco. The licensee shall cause to be placed upon each sheet of type 14 tobacco a white sheet ticket that shall remain upon the sheet of tobacco at all times after receipt in the warehouse until after the sale of the sheet of tobacco and shall cause such ticket to have a carbon copy of the same color that shall remain with the sheet of tobacco at all times subsequent to sale, as well as prior to the sale, that the tobacco remains in this State.

(B) Each licensee shall cause to be placed upon each sheet of other than type 14 tobacco received by him for sale, at the time of the receipt thereof, a colored identification tag of a color prescribed by the Commissioner that shall be attached to and shall remain in a conspicuous place at or near the top of the sheet of tobacco in such manner as to show to any person who desires to ascertain the type of tobacco offered for sale, or held for sale, that the tobacco is other than type 14. It shall be the duty of each licensee to ascertain at the time of the receipt of the tobacco to ascertain from producers or others the origin of the tobacco offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type.

(C) Each licensee receiving tobacco from persons other than producers for sale shall require that the origin of the tobacco be proven to his satisfaction so as to enable the licensee to properly identify the type of tobacco.

(D) Any licensee who shall indicate or permit to be indicated upon his premises any tobacco as type 14 when, in fact, such tobacco is not type 14 or any licensee who shall violate the provisions of this Section shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not less than one year nor more than five years and shall be subject to a fine of not more than $5,000.00 or both such fine and imprisonment.

(E) It is the intent and purpose of this Section to provide a means to positively identify type 14 tobacco

and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this state.

Section 14.

It shall be the duty of each licensee to provide identification tags of the color prescribed by the Commissioner for the use in marketing tobacco in his warehouse. Each licensee shall submit proof to the Commissioner prior to the opening of the marketing season, at a time prescribed by the Commissioner, of each year of an adequate supply of the identification tags required for the operation of his warehouse during the subsequent marketing season. Identification tags shall be of the size, color, number of carbon copies, shape and provide for information as shall be prescribed by the Commissioner.

Section 15.

Any person who shall purchase tobacco at auction for resale shall cause the tobacco so purchased to retain its identity as to type. Any person who shall mix type 14 tobacco with any other type of tobacco and who shall offer such mixed tobacco for sale shall cause such tobacco to be marketed and identified as other than type 14 tobacco. It shall be the duty of each purchaser for resale to retain the original identification ticket of each sheet of tobacco so purchased or a copy thereof and submit such sheets to the warehouse as a means of identification when the tobacco is offered for resale.

Section 16.

It shall be unlawful for any person to purchase tobacco for resale without having first registered with the Commissioner of Agriculture. There shall be no fee for such registration and the Commissioner is authorized to revoke,

suspend or cancel such registration after notice and hearing for any violation of this Act or any rule or registration promulgated hereunder.

Section 17.

The Commissioner, himself or through his agent, is authorized to inspect the premises of each licensee as often as he shall deem necessary. It shall be the duty of each licensee to cause to be kept records that shall be open to inspection by the Commissioner in such manner as to accurately show the origin and disposition of each type of flue-cured leaf tobacco.

Section 18.

It shall be the duty of each licensee to provide a certified public weigher for the weighing of tobacco upon his premises and it shall be unlawful for any person to weigh tobacco for sale who is not a certified public weigher.

Section 19.

It shall be the duty of the Commissioner to enforce the provisions of this Act and to utilize any employee of the Department of Agriculture in the performance of his duties hereunder. The Commissioner is authorized to revoke or suspend any license or registration issued hereunder after notice and hearing before the Commissioner.

Section 20.

In addition to the remedies provided herein and notwithstanding the existence of any other remedy of law and notwithstanding the pendency of any criminal prosecution, the Commissioner is authorized to apply to the Superior Court and such Court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or an Ex parte restraining order restraining or enjoining any person from violating or continuing to vio-

late any of the provisions of this Act or for the failure or refusal to comply with the provisions of this Act or any rule or regulation promulgated hereunder. Such injunction shall be issued without bond.

Section 21.

(a) Prior to adoption or change of any rules and regulations, the Commissioner shall promulgate the proposed promulgation or change and afford interested persons an opportunity to be heard and submit data and views orally or in writing.

(b) Any person with a real and substantial interest who is affected by a rule and regulation of the Commissioner who believes that the Commissioner in the promulgation or enforcement of such rule or regulation has exceeded the authority vested in him by the General Assembly under the Constitution of Georgia or United States shall have the right to petition the Commissioner for the repeal or rejection of such rule or regulation by pointing out in what respect and for what reasons he contends the rule to be unlawful or unconstitutional. The Commissioner is required to consider every such petition and afford the petitioner an opportunity to be heard within thirty (30) days, and, after argument, the Commissioner shall determine the merits of the petition. If the Commissioner decides in whole or in part in favor of the petitioner, the Commissioner shall take corrective measures within thirty (30) days after the hearing to give the petitioner relief in every respect from any unlawful or unconstitutional rule or regulation. The foregoing is expressly made an administrative remedy and every person affected by any rule or regulation or any Act of the Commissioner is required to exhaust this remedy before taking any other steps.

(c) All hearings before the Commissioner shall be stenographically reported and shall be available to any interested party upon payment of the stenographic cost.

Section 22.

(a) Procedure.

(1) Any person aggrieved by a final decision or determination in any matter in which a hearing is required or authorized by this Act or by the State or Federal Constitution is entitled to judicial review thereof, provided that the judicial review herein afforded shall be exclusive judicial remedy for review of such decision or determination.

(2) Proceedings for review shall be instituted by filing a petition in the superior court of the county in which the Commissioner resides, within thirty (30) days after service of the final decision or determination of the Commissioner. Copies of the petition shall be served upon the Commissioner and all other parties of record. The court in its discretion may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the Commissioner's decision; but the Commission may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty (30) days after service of the petition, or within such further time as the court may allow, the Commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in

the proceeding before the Commissioner, the court may order that the additional evidence be taken before the Commissioner upon such conditions as the court may deem proper. The Commissioner may modify his findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

(b) Scope of review.

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Commissioner, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(2) The court may affirm the decision of the Commissioner or remand the case for further proceedings before the Commissioner; or it may reverse or modify the decision or compel action unlawfully withheld, if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the Commissioner or affected by other error of law; or

(c) made upon unlawful procedure; or

(d) unsupported by substantial evidence as weighed in view of the entire record as submitted; or

(e) arbitrary or capricious.

(c) Appeals procedure. An aggrieved party may secure a review of any final judgment of the superior court under this Act by writ of error to the appropriate appellate court.

Section 23.

At such time as the Commissioner deems there has been a violation of this Act and the rules and regulations promulgated hereunder, he shall have the power and authority to suspend the license or registration pending investigation of such violation and until such time as the violation has been corrected to the satisfaction of the Commissioner. During the period of time of any investigation of a violation, the Commissioner shall have the power and authority to impound all books and records and to preserve and maintain evidence until investigation is completed. Provided, however, that the investigation shall be completed at the earliest practicable time.

Section 24.

Code Chapter 111-2, relating to statistics on leaf tobacco is hereby repealed in its entirety.

Section 25.

An Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco is hereby repealed in its entirety.

Section 26.

An Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the Sale of flue-cured leaf tobacco, is hereby repealed in its entirety.

Section 27.

Any person who shall violate any provision of this Act for which no specific punishment is provided herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

Section 28.

All laws and parts of laws in conflict with this Act are hereby repealed.